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Phone No.

FROM: Cindy Lukas

Fax No. 513-622-3300

Phone No. 513-622-1692

Application No.: 10/725,248

Inventor(s): Norton, S.A., et al.


Filed: December 1, 2003

Docket No.: P145

Confirmation No.: 1932

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/725,248
Appellant(s) : Norton, S.A., et al.
Filed : December 1, 2003
Title : Compositions Comprising Fermentable Fiber Which Are
Adapted For Use By A Companion Animal And Kits And
Methods Of Their Use
TC/A.U. : 1623
Examiner : Khare, Devesh
Conf. No. : 1932
Docket No. : P145
Customer No. : 27752

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir,

The following is in response to a notification of Non-Compliant Appeal Brief under 37 CFR 41.37. The original Appeal Brief was filed April 3, 2007. A Notice of Appeal was timely filed on September 8, 2006. The original Appeal Brief was returned as non-compliant, the Official Action indicating that the claimed invention is not mapped to identify independent Claims 1 and 14, and that the heading of section II is incorrect. A timely response to the one month/30 day deadline is due June 18, 2007. Corrected pages 2 and 5 of the Appeal Brief are attached hereto to replace original pages 2 and 5.

Appl. No. 10/723,248
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Original Appeal Brief: April 3, 2007
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Customer No. 27752

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SUMMARY

In view of the attached corrected pages 2 and 5 of the Appeal Brief, it is respectfully submitted that the Appeal Brief is now compliant.

Respectfully Submitted,

THE PROCTER & GAMBLE COMPANY

By


Kristin Kohler

Registration No. 41,907

(513) 622-3371

June 15, 2007

Customer No. 27752

Appl. No. 10/725,248
Att. Docket No. P145
Original Appeal Brief: April 3, 2007
Corrected Appeal Brief Pages: June 15, 2007
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CORRECTED PAGE 2

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RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1-12 and 14-23 are pending in the present application. Claim 13 and Claims 24-53 are withdrawn. Claims 1-12 and 14-23 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention provides compositions, kits, and methods which are useful for providing gastrointestinal health benefits, and reducing fecal odor, in a companion animal. The compositions, kits, and methods use fermentable fiber. Compositions of the present invention can be provided in a liquid form for use by a companion animal. The compositions of Claim 1 are described beginning at Page 3, lines 29 of the specification. The compositions of Claim 14 are described at Page 4, lines 1-3.

GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

(I) Rejection of Claims 1-12 and 14-23 under 35 USC § 112, second paragraph.

(II) Rejection of Claims 1, 6-9, 14, 15, and 18-21 under 35 USC § 102(b) over US Patent 4,241,093 to Farag et al. (hereinafter "Farag").

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CORRECTED PAGE 5

II. Claims 1, 6-9, 14, 15, and 18-21 are patentable over Farag because Farag does not disclose each and every element of the Claims.

Claims 1, 6-9, 14, 15, and 18-21 are rejected under 35 USC § 102(b) as being anticipated by US Patent No. 4,241,093 to Farag.

The Examiner asserts that Farag discloses a stable, bland, free flowing food supplement comprising sugar beet pulp and that Farag also discloses a composition comprising at least 0.25% fermentable fiber and the Examiner notes that human beings are "companion animals".

In response to the Applicant's previous arguments, that Farag does not disclose fermentable fiber, nor use in a companion animal, the Examiner replies with the analysis that beet pulp includes fiber that is moderately fermentable and that therefore Farag teaches the limitations of the Claims. The analysis used by the Examiner in making the rejection final also asserts that the Applicants' use of the phrase "and the like" in defining a "companion animal" extends the definition to include humans, and therefore, the Applicants' composition for companion animals is merely an intended use, does not create a structural difference between the claimed composition and the cited composition, and thus is not limiting. The Applicants respectfully traverse this rejection.

Under § 102, anticipation requires that all the Claim elements appear in a single prior art document. "A Claim is anticipated only if each and every element set forth in the Claim is found, either expressly or inherently described, in a single prior art reference". MPEP § 2131 citing *Verdegal Bros. v. Union Oil of California*, 814 F.2d, 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The Identical invention must be shown in as complete detail as is contained in the ... Claim." MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989).

The present invention requires in Claim 1 a composition comprising at least about 0.25% of total fermentable fiber, by weight of the composition, wherein the composition is a liquid which is adapted for use by a companion animal. Farag never teaches or suggests a liquid composition comprising at least about 0.25% of total fermentable fiber. Farag